



# **Nitrate Vulnerable Zone appeals**

## **A guidance for individuals**

These notes are intended to help individuals who are representing themselves in appeals against land being included in a nitrate vulnerable zone. People who represent themselves in a court or tribunal, rather than being represented by lawyers, are often known as 'litigants in person'.

These notes are set out in the form of questions and answers. There is a glossary at the end intended to explain the meaning of words and phrases that might not be obvious.

### **1. What is the tribunal's role in these cases?**

The tribunal's role is to hear appeals brought by land owners or occupiers against the inclusion of their land in a nitrate vulnerable zone. The tribunal will listen to the evidence and submissions from both sides and to decide whether the regulator's actions were correct in law, not based on an error of fact and were reasonable in the circumstances.

### **2. When and how can I appeal to the tribunal?**

You will receive a notice from the regulator telling you that your land has been designated as within a nitrate vulnerable zone. You can then appeal to the tribunal but you must do so with 28 days of the date that the notice was sent to you or the tribunal might not allow your appeal to proceed. If you submit your appeal later than that, you should include an explanation of why it is late. The tribunal will consider your explanation and decide whether the appeal can be accepted.

There is an appeal form on the tribunal's website at [www.justice.gov.uk/tribunals/environment](http://www.justice.gov.uk/tribunals/environment)

You can also obtain a copy of the form by contacting the tribunal and the staff will send one to you by post but bear in mind the 28 day time scale. You do not have to use this form but it is in your interests to do so because it will make sure that you give the tribunal all the information that it needs to begin processing your appeal.

You should send the completed form to:

HM Courts & Tribunals Service  
General Regulatory Chamber  
First-tier Tribunal (Environment)  
PO Box 9300  
Leicester LE1 8DJ

If time is short and you are in danger of going beyond the 28 day limit, you can send the application by fax to 0116 249 4253 or you can scan it and send it by email to [grc.environment@hmcts.gsi.gov.uk](mailto:grc.environment@hmcts.gsi.gov.uk).

### **3. What happens after I submit my appeal to the tribunal?**

The tribunal will send a copy of your notice of appeal to the regulator. The regulator must reply in writing to the tribunal and send you a copy within 28 days. That reply, or response, will answer your notice of appeal and will usually set out which grounds the regulator accepts and those with which it disagrees.

Both the notice of appeal and the regulator's response will then go before a tribunal judge who will assess them and, normally, issue initial directions as to how the case will be managed.

### **4. Other than me, who will take part in the appeal process?**

The individuals or organisations that take part in the appeal are referred to as parties. Thus you will be a party to the appeal as will the regulator.

Sometimes, other organisations or individuals will be joined to your appeal as parties by order of the tribunal or by request. They must have a particular interest in the issues raised in your appeal.

### **5. Will there be an oral hearing or will my appeal be dealt with on paper?**

There are two ways in which an appeal can be determined.

#### **i. Oral hearing**

This will be a hearing, similar to but less formal than a court hearing, to determine the case where all parties attend to plead their case before a tribunal judge and a tribunal member. Each party may call witnesses who will be questioned by both sides and by the tribunal. The tribunal may direct that witnesses who give evidence swear on an appropriate Holy Book or make an affirmation to tell the truth. The parties will also be expected to make submissions – that is to explain to the tribunal what decision they say it should reach and why. At the end of the hearing the tribunal might announce its decision with written reasons to follow but, more commonly, the tribunal will take more time to deliberate over its decision and send a written decision to the parties within three weeks.

#### **ii Paper hearing**

Although known as a hearing, strictly speaking it is not. The judge and member will meet in the absence of the parties and come to a decision based on the paper submissions made by the parties. They will then send their decision, in writing, to the parties. An appeal cannot be determined by a paper hearing unless all the parties consent and the tribunal is satisfied that it can properly determine the issues without an oral hearing.

## **6. If there is an oral hearing, where will it be held?**

The tribunal can sit in anywhere in the United Kingdom although its administration is based in Leicester. It does not have hearing venues of its own and uses the accommodation of other bodies, usually other parts of HM Courts & Tribunals Service. If the parties have any views as to the location, they should tell the tribunal as early in the process as possible. The tribunal will decide the location after taking into account any views that the parties might have expressed.

## **7. How does the tribunal decide what needs to be done to prepare a case for a hearing?**

Whether an appeal is to be determined by way of an oral hearing or on papers, there are steps that need to be taken to prepare the case. Those steps will normally include:

The parties will need to provide to each other copies of any information they hold that is relevant to the appeal.

They will need to agree which documents should be put before the tribunal. Those documents will normally be included in files, known as bundles. They will need to agree the content, order and page numbering of the bundles and provide three copies of the bundles to the tribunal.

They will need to provide to the tribunal with a document setting out their arguments in writing.

## **8. How will I know what the tribunal wants me to do?**

The tribunal may issue directions setting out what it requires the parties to do to prepare for the hearing together with a timetable as to when those steps are to be taken. In most cases, the tribunal will send initial directions to the parties when the regulator has replied to the notice of appeal.

## **9. What should I do to make sure that the tribunal has all my documents?**

The tribunal's directions will normally include one as to who is to produce the bundle of documents that are to be placed before the tribunal. Litigants in person will rarely be asked to do this but you must make sure that you provide documents that you wish to be included in good time to the person responsible for the bundle's production.

## **10. How will I know the date of the hearing?**

As already explained above, you will have a very good idea of the date from the directions issued but the tribunal will send you a formal notice of hearing at least 14 days beforehand. This notice will include the start time and address of the place where it will be held. The tribunal will either send you a map of the area or a link to a site such as Google Maps or similar where you can view appropriate maps.

## **11. What happens at an oral hearing?**

Oral hearings might last for as little as half a day or might take several days but we expect most cases relating to Nitrate Vulnerable Zones to be completed within one day.

The tribunal members will have a name board in front of them so that you know whom you are addressing but usually they will introduce themselves. There may be a short discussion to ensure that everyone agrees what the issues are, and to deal with 'housekeeping' issues (e.g. making sure that everyone has all the necessary papers in front of them). In more complex cases, the tribunal may invite or permit the parties to make a short opening statement explaining what their case is about.

The tribunal will then hear any witness evidence. The usual order, though this is not always the case, would be for the tribunal to hear any witnesses called by the party bringing the appeal; then to hear any witnesses called by the regulator and then to hear any witnesses called by any other party. Each witness will give evidence in turn. The witness will be questioned by the party who called them to give evidence. This is called 'examination-in-chief'. Often the tribunal will dispense with this part of the proceedings because all parties and the tribunal will have read the witness's statement in advance. The only questions in examination-in-chief might be to establish the identity of the witness, to have him or her confirm that the statement provided to the tribunal and parties is indeed his or hers and to confirm that it is true. The witness will then be questioned by other parties who wish to challenge their evidence. This is known as 'cross-examination'. The tribunal will ask questions, usually at the end of cross-examination but might intervene in the course of evidence-in-chief or cross-examination with its own questions. Finally, the party that called the witness may ask questions in order to clarify any issues arising from the questions asked by other parties or by the tribunal. This is called 're-examination'.

It is unlikely that the tribunal will allow witnesses to give evidence unless written statements have been served on all parties and on the tribunal in advance of the hearing.

Lastly, the tribunal will hear oral submissions from each party in turn. The usual order, although again this is not always the case, is for the tribunal to hear submissions from the party bringing the appeal; then from the regulator and then from any other parties. This is the opportunity for each party to explain to the tribunal what decision they are asking it to reach, and why. This is also the point at which any legal arguments are dealt with. In submissions, parties may ask the tribunal to look at particular sections of legislation and they may also ask the tribunal to look at earlier decisions of the tribunal itself, or of the courts.

## **12. Can I be present throughout the hearing?**

The general rule is that the tribunal hearings take place in public and that all the parties and anyone else can be present throughout but sometimes it might be necessary to hold part of the hearing in private with the public, and possibly a party, excluded if matters of a particularly confidential nature are to be discussed. Should that happen, the tribunal will explain why that step has had to be taken and the hearing will resume in public as soon as possible.

A hearing from which the public and some of the parties are excluded is referred to as a 'closed hearing' rather than an 'open hearing' to which the public has access. If you are required to leave the hearing because it goes into closed session, you should bear in mind that it is difficult to predict for how long the session will be closed.

## **13. Will the other parties have lawyers?**

The regulator will usually be represented by someone on the regulator's staff or an external barrister or solicitor instructed to represent them.

## **14. How is the tribunal made up?**

Normally a tribunal will comprise a tribunal judge and a tribunal member. The judges are lawyers, either solicitors or barristers, of at least seven years standing. The members have no legal qualification but will usually have some sort of environmental background or knowledge of hydrology. Occasionally in a high profile or complex case, two judges will sit with a tribunal member or in an urgent case; a judge might even sit alone.

## **15. How formal is the hearing?**

Tribunal hearings are less formal than hearings in court. For instance, everyone sits down throughout and you will not have to stand to speak, although as a courtesy you will probably be asked to stand when the tribunal enters and leaves the room. The tribunal will wear suits not wigs and gowns. It is customary to address the judge and members as Sir or Madam rather than Your Honour or My Lord as in some courts. The tribunal will address you as Mr or Mrs or whatever is appropriate.

On the other hand, compared to something like a business meeting, a tribunal hearing is a more formal process. There is a set order of events, as explained above. Everyone speaks in turn and you should not interrupt witnesses or parties or their representatives. If you disagree with something that one of the other parties says in their submissions, you will not be able to make your point straight away; you will need to wait until it is your turn to speak before you can raise it. It might help you keep notes of what you want to say so that you do not forget when it comes to your turn to speak.

## **16. Is the tribunal used to dealing with people representing themselves?**

In other tribunals of the General Regulatory Chamber, such as the Information Rights jurisdiction, about 60% of appeals are brought by people representing themselves. Nitrate Vulnerable Zone cases are new to this chamber and so there are no actual figures to quote, however many of the judges and members also sit in the Information Rights jurisdiction and so are used to dealing with litigants in person. They will do everything possible to make sure that you understand the process and that you have a fair hearing. If at any point you do not understand what is happening or why, you should say so.

If you would like to see the layout of the hearing room to familiarise yourself before the hearing starts, ask the clerk and he or she will normally be able to show you round before the start of the hearing.

## **17. Am I allowed to have a friend to help me at the hearing?**

Yes, you can have a friend with you who might, for instance, take notes and give you advice.

## **18. Can I be represented by someone who is not a lawyer?**

Yes you can but you should tell the tribunal in writing, well before a hearing, who your representative is.

If you are attending the hearing with someone else who is there to help you, then you will need to decide in advance who will present the case. One option will be for you to represent yourself, with the other person giving you advice and support. Alternatively, the other person could present the case.

However you plan to present your case, it is important to decide beforehand what roles you and the person accompanying you propose to play. The tribunal might well resist a situation where you ask questions or make submissions someone acting on your behalf asks questions or makes submissions. If you particularly want to conduct your case this way, make it clear at the outset that that is what you propose to do and ask the tribunal's permission.

## **19. How will I find out the result of my appeal?**

You will normally receive a written determination giving the result and reasons for that result within three weeks of the hearing. In urgent cases, the tribunal might announce its decision at the hearing with full reasons to follow in writing within three weeks but that is unusual.

## **20. What powers does the tribunal have?**

The tribunal's task is to decide whether the regulator's decision was right or whether it should be overturned or varied in some way. It will take into account whether the decision was correct in law, correct in matters of fact and reasonable.

## **21. How long will it all take?**

The tribunal aims to conclude 75% of appeals within 36 weeks. Some will take less time than that but other, more complex ones might take longer.

## **22. Will I have to pay the other party's costs if I lose?**

Usually, parties will have to pay their own costs regardless of who wins or loses but the Tribunal can order a party to pay costs if they have acted unreasonably.

## **23. What can I do if I disagree with the tribunal's decision?**

There is a right to appeal against the tribunal's decisions, to the Administrative Appeals Chamber of the Upper Tribunal but an appeal is only allowed on a point of law; in other words, you would need to be able to show that the tribunal made a mistake of law in reaching its decision. Like a First-tier Tribunal, all parties bear their own legal costs.

## **24. What is the status of these Guidance Notes?**

These notes are intended to help people who are representing themselves. They are not an authoritative statement of the law. The provisions that govern the Tribunal's work are set out in the Nitrate Pollution Prevention (Amendment) Regulations 2012 and The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 together with the Tribunal's practice notes. This document is not intended to modify those provisions in any way; rather, they are meant to help you understand how these provisions will operate in practice.

## **GLOSSARY**

This section sets out a short explanation of words and phrases that may cause difficulty, either because they are unfamiliar or because they have a special meaning in the context of the tribunal's work.

### **Appellant**

The party who appeals against a decision.

### **Authorities**

Cases previously decided by a court or tribunal, relied upon by a party in support of its argument.

### **Cast list**

A document listing the individuals who are involved in the facts giving rise to an appeal, and explaining who each one is. Sometimes helpful in cases that are factually complex.

### **Chronology**

A document setting out a list, in date order, of the main events. Sometimes helpful in cases that are factually complex.

### **Closed hearing**

A tribunal hearing from which the public (and sometimes one or more of the parties) are excluded. Should the tribunal need to consider material that at that time is confidential, it will often do so in a closed hearing.

### **Cross-examination**

Cross-examination is the questioning of a witness in order to challenge or undermine the evidence of that witness. In general, if you call a witness to give evidence then you are not allowed to cross examine that witness: i.e. you cannot usually ask your own witness questions designed to show that what they are saying in evidence is wrong.

### **Directions**

Instructions from the tribunal to the parties as to the steps they are to take to prepare for a hearing.

### **Disclosure**

The process by which each party informs the others of what documents it has that are relevant to the appeal, and provides copies of them if necessary.

### **Discretion**

Sometimes legislation leaves a decision-maker to make a choice between different courses of action in the light of all the circumstances, rather than setting out a fixed rule about what must happen in particular circumstances. In this situation the decision-maker is said to have discretion as to how it should act.

### **Examination-in-chief**

At the start of the evidence of a witness, the party who called that witness has the opportunity to ask questions of that witness. This is known as 'examination-in-chief'.

### **Legislation**

In general this consists of Acts of Parliament (sometimes referred to as statutes), and regulations (sometimes referred to as statutory instruments).

### **Open hearing**

A tribunal hearing to which all of the parties and the public are admitted.

### **Party**

The persons or organisations who take part in the appeal process are referred to as 'the parties'. The parties will always include the regulator, and the person making the appeal.